

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1001 of 2003
In
CIVIL APPLICATION - FOR ORDERS No. 5334 of 2003
In
SPECIAL CIVIL APPLICATION No. 8729 of 2000

with
CIVIL APPLICATION No.6780 of 2003
in
LETTERS PATENT APPEAL No. 1001 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

=====

CYANIDES & CHEMICALS COMPNAY - Appellant(s)
Versus
MANSINGH MANGALRAM VARMA - Defendant(s)

=====

Appearance :

Mr.Keyur Gandhi for Messrs NANAVALI ASSOCIATES for appellant.

MR MS MANSURI for Respondent No(s).: 1.

=====

CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 10/08/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The present is an appeal under clause 15 of the Letters Patent by dissatisfied employer against order dated 06.08.2003 passed on Civil Application No.5334 of 2003 in Special Civil Application No.8729 of 2000, whereunder the learned Single Judge required the appellant to pay wages in accordance with section 17B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The short facts necessary for disposal of the appeal are that after pronouncement of the award the appellant preferred Special Civil Application No.8729 of 2000 with Civil Application No.3234 of 2003 and made a prayer to the Court for staying the operation of the award. The Court made an interim order on Civil Application No.3234 of 2003 on 06.05.2003 and directed the original petitioner to pay last drawn monthly wages to the workman with effect from 19.05.2000 till 30.04.2003 within six weeks from the date of receipt of the copy of the order and also directed the employer-appellant to pay regularly such wages under section 17B of the Act every month during pendency and till final disposal of

Special Civil Application No.8729 of 2000.

3. It appears that during the pendency of the Special Civil Application the employer could collect certain facts and therefore, made Civil Application No.5334 of 2003 for recalling/ modifying the order dated 06.05.2003. It was submitted by the appellant that the appellant was gainfully employed and was engaged in fabrication and erection work and was carrying on business of a contractor in the name and style of V.K. Enterprise. Therefore, he was not entitled to any order under section 17B of the Act in his favour.

4. The application was opposed by the respondent. After hearing both the sides, the learned Single Judge, placing his strong reliance upon his earlier judgement in the matter of University Granth Nirman Board Vs. Udesinh Togaji Solanki, reported in 2003 (1) G.L.H. 626, observed that wages under section 17B of the Act can be denied only if the workman is employed with some establishment and is getting adequate remuneration. He accordingly rejected the application. Therefore, the appellant is before this

Court.

5. Mr. Keyur Gandhi, learned counsel for the appellant after taking us through the record submitted that the approach of the learned Single Judge was patently wrong especially in view of the fact that the respondent was gainfully employed and was earning a handsome amount, wages under sec.17B of the Act could not be awarded. His submission is that if the view taken by the learned Single Judge is approved it would lead to a chaos, because on one side the workman would be self-employed, may earn good fortune and at the same time the employer would be called upon to pay wages under section 17B of the Act.

6. We have heard the parties at length.

7. For proper appreciation of the matter it would be necessary to refer to the language employed in section 17B of the Act. Section 17B of the Act reads as under:

"17B. Payment of full wages to workman

pending proceedings in higher courts. -- Where in any case a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as

the case may be."

8. From the above provision of law it would clearly appear when proceedings are initiated before the High Court or Supreme Court by any employer in a matter where the Labour Court, Tribunal or National Tribunal has awarded reinstatement, then the employer shall be liable to pay to such workman during the period of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period. The moment the workman files an affidavit that the said workman had not been employed in any establishment during such period, then liability of the employer crops up.

(emphasis supplied)

9. From the proviso appended to section 17B of the Act, it would again appear that the benefits flowing from the main part of section 17B of the Act can be denied, if it is proved to the satisfaction of the High Court or Supreme Court that such workman had been employed and had been receiving adequate remuneration

during any such period or part thereof. A conjoint reading of the main section and the proviso would make it clear that the question of the self employment would not be material for the purposes of section 17B of the Act. The language employed in the section says that the workman who informs the Court that he had not been employed in any establishment then the wages cannot be denied. The wages can be denied if the High Court or the Supreme Court is satisfied that the workman is employed and had been receiving adequate remuneration.

10. When a person is working for somebody for wages or otherwise, then such other person would be deemed to be an establishment and any amount paid by such person/ establishment towards the services rendered by the workman would be taken to be remuneration for the services so provided. According to the Oxford Dictionary 'remuneration' would mean 'payment of some amount for services rendered for the work done'. If the law says that wages can only be refused, if the workman had been employed and had been receiving adequate remuneration, then ordinary words which have been used in the provisions of law are required to

be given their ordinary meaning. The proviso can be made applicable only if it is proved to the satisfaction of the High Court or Supreme Court that the workman had been employed and he is receiving some/ adequate remuneration for the services rendered by him. In the present matter on appellant's own saying it is clear that respondent was not employed with any establishment but was making some earnings by doing some work.

11. To employ somebody would mean to give work to some one and pay them for it. It would also mean to keep the person occupied. An employee would be a person who is employed for wages or salary. When the law says that the wages are to be paid to the workman, if he has not been employed in any establishment, then the only consideration before the Court would be whether such person has been given some work in some establishment, i.e. he has been employed by the establishment or employer for wages or salary.

12. It is to be noted that the words "workman had not been employed in any establishment" have been used in a particular context and they would indicate that these

have been used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or relationship of command and obedience. The essential condition of a person being employed within the phrase would mean that he should be employed to do the work with someone else and that there should be, in other words an employment of his by the employer and that there should be, a relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus, so employed, the wages under Section 17-B will have to be paid.

13. It is to be noted that in the present matter the workman made a statement before the Court that the moment he is reinstated he was ready and willing to join. If that is so it would lead to only irresistible conclusion that what he was earning in his self-employment was less than what he could have received on his reinstatement.

14. The learned Single Judge, in our considered opinion, was justified in observing that the

appellant failed to prove that the respondent was employed with some establishment and he was getting adequate remuneration.

15. We would also agree that the observations made in the judgement in the matter of University Granth Nirman Board (supra) that the words "adequate remuneration on being employed in an establishment" would mean receipt of salary or wages from an employer and what workman earns to maintain his body, soul or family by doing miscellaneous work would not be coming within the sweep of 'employment with an establishment'.

16. For the reasons aforesaid we find no reason to interfere. The Letters Patent Appeal is dismissed.

17. Consequently, Civil Application NO.6780 of 2003 is also dismissed.

(R.S. GARG, J.)

(RAVI R. TRIPATHI, J.)